

U.S. Department of Labor

Office of Administrative Law Judges
Washington, DC



In the Matter of

ROBERT SWANGER et al.,
Complainant

Case No. 86-JSA-4

v .

FAIRVIEW ORCHARDS ASSOCIATES,
Respondent

ORDER

Upon consideration of the parties' Stipulation of Dismissal, the representations contained therein, and the requirements of the public interest, it is hereby ORDERED that above-captioned matter is dismissed with prejudice pursuant to 29 CFR §18.39(b), each party to bear its own fees and expenses. It is further ORDER that Fairview's appeal and the Decision of the Regional Administrator dated December 17, 1985, are withdrawn pursuant to the terms of the Stipulation of the parties. The terms of the Stipulation of Dismissal are incorporated herein.

RENO E. BONFANTI
Administrative Law Judge

Dated: December 17, 1986
Washington, DC

Attachment: Stipulation of Dismissal

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of :

ROBERT SWANGER et al.,
Complainant,

Case No. 86-JSA-4

v.

FAIRVIEW ORCHARDS ASSOCIATES,
Respondent.

STIPULATION OF DISMISSAL

The Regional Administrator (hereinafter RA), by counsel, and Fairview Orchards Associates (hereinafter Fairview), by counsel, in full resolution of the above-captioned matter, hereby stipulate and agree as follows:

1. By Decision issued December 17, 1985, the RA affirmed the imposition of the sanction of discontinuation of Job Service services to Fairview pursuant to 20 C.F.R. §658.501, and ruled Fairview ineligible to apply for a temporary labor certification in the coming year pursuant to 20 C.F.R. §655.210 of the temporary foreign labor certification regulations. The ruling was based on the RA's finding that Fairview violated the terms of its temporary labor certification assurances and the terms of its job offer by not hiring the complainants in this matter who were deemed qualified U.S. workers who had applied to Fairview pursuant to a referral by the Maryland State Employment Service in 1983, before fifty percent of the contract period had elapsed pursuant to 20 C.F.R. §655.203(e).

2. Pursuant to Fairview's appeal of the RA's Decision and request for a hearing, this matter was referred to the Department of Labor Office of Administrative Law Judges by order of Reference dated February 27, 1986.

3. By letter dated July 9, 1986, counsel for the RA advised that the Department of Labor and Fairview had agreed to a settlement of their disputes, including the above-captioned matter.

4. Pursuant to the aforementioned settlement, Fairview, inter alia, has provided assurances it has fully resolved all disputes with all known complainants, including the complaints which are the basis of this matter; it will in the future comply in good faith with the rules and regulations governing the Job Service system and the temporary employment of foreign

workers, with the terms and conditions imposed by the labor certification, job offers and clearance orders, and with all applicable Federal and State employment-related laws and regulations. It is understood that in making assurances and reaching settlement of claim, charges and proceedings, Fairview does not admit any past violations or liability.

5. Fairview also has provided specific assurances it will not engage in the alleged employment practices described in Paragraph 1 above which caused the disputes with the Department of Labor, including those practices which resulted in the complaints involved in this matter.

6. In view of the foregoing, the parties hereby stipulate and agree to the dismissal of this matter; Fairview stipulates and agrees to the withdrawal of its appeal of the RA'S Decision dated December 17, 1985; and the RA stipulates and agrees to the withdrawal of his aforementioned Decision dated December 17, 1985.

7. Further, each party agrees to bear its own fees and other expenses incurred by such party in collection with any stage of this proceeding.

George R. Salem
Solicitor of Labor

FAIRVIEW ORCHARDS ASSOCIATES Marshall H. Harris
Ann Margaret Pointer, Esquire Regional Solicitor
FISHER & PHILLIPS

Attorney for Arthur J. Corrado, Jr.
Fairview Orchards Associates Attorney
UNITED STATES DEPARTMENT OF LABOR
Attorneys for Regional Administrator